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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 SONOMA COUNTY ASSOCIATION OF  
4 RETIRED EMPLOYEES,

Plaintiff,

v.

15 MC 191 LGS

6 COUNTY OF SONOMA, et al.,

7 Defendants.

8 -----x

9 August 6, 2015

10 11:35 a.m.

11 Before:

12 HON. LORNA G. SCHOFIELD,

13 District Judge

14  
15 APPEARANCES

16 LEWIS, FINEBERG, LEE, RENAKER & JACKSON, PC (CA)

Attorneys for plaintiff

17 BY: DARIN RANAHAN, Esq.

Of counsel

18  
19 STEVEN PECK

Attorney for defendant County of Sonoma

20  
21 LOWENSTEIN SANDLER, LLP (NJ)

Attorneys for defendant Towers Watson Delaware, Inc.

22 BY: GAVIN J. ROONEY, Esq.

Of counsel

23  
24 Also Present:

PAUL MEYER, In-House Counsel

25 Towers Watson Delaware, Inc.

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(Teleconference in the Robing Room)

THE COURT: Okay. Good morning, counsel. First my apologies. We had several conferences before you and they ran over. Unfortunately, I understand you have been sitting on the phone, so I apologize for that.

We're here on the petition of the plaintiff Sonoma County. I am not sure if you're the plaintiff, but, in any event, yes. Well, in any event, this is a petition by Sonoma County Association of Retired Employees to compel Towers Watson, a third party, to comply with a subpoena served on Towers in November 2014. I know that Towers opposes the motion on the ground that it is untimely and also on the ground that the information is irrelevant or duplicative of other documents produced. I know also that Towers Watson asks that to the extent that production is required, that Sonoma County Association be required to bear the costs of production.

I don't want to prolong this, but I would like to hear from each side first on the timeliness issue. Let me hear from Mr. Ranahan first.

MR. RANAHAN: Sure. So the timeliness issue, as I understand it, was Towers raised the fact that we filed --

THE COURT: I am sorry. Let me interrupt you. I should hear from Mr. Rooney first because it is Towers' argument.

MR. ROONEY: Yes. Thank you, your Honor.

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1           There was a scheduling order answered in the  
2           underlying litigation to which the subpoena relates in  
3           California by Judge Wilken, and the scheduling order closed  
4           fact discovery on June the 23rd. It did carve a few exceptions  
5           to that close of discovery for certain open discovery issues,  
6           including possible motions to compel, but the carve-out was  
7           explicit to the particular motions to compel, and this was not  
8           included within it.

9           The motion here was filed, according to the docket, on  
10          the 2nd of July, more than a week later than the close of  
11          discovery. So we think that the motion was clearly filed in  
12          derogation of the scheduling order that was entered in  
13          California, and this Court should respect that order.

14          There has been no application, to my knowledge, to  
15          vary that scheduling order. There is also no reason why there  
16          was a delay in the filing of the motion. There was a lengthy  
17          meet-and-confer process between the parties. That record is  
18          before your Honor. I think the last word in that  
19          meet-and-confer was actually a letter from my client, dated the  
20          4th of May, which was two months before the motion was actually  
21          filed. So we think that this motion is untimely and the court,  
22          therefore, need not entertain it.

23          THE COURT: Okay. Mr. Ranahan, why the time between  
24          May 4th and the actual filing of the motion? Why did it take  
25          as long as it did?

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1 MR. RANAHAN: Sure. So, first, we had a summary  
2 judgment motion due May 28th. So even though the impasse was  
3 reached in early May, we were turning our attentions to the  
4 summary judgment motion first and foremost.

5 I also had been working on this and was out of the  
6 country from May 14th to May 30th, so that the whole month of  
7 May was more or less eaten up by that.

8 As for June, actually the county noticed five  
9 different depositions in June which I was responsible for  
10 defending, and we need time to put together the motion. So we  
11 did that in June and attempted to file it on June 30th to  
12 address the points raised by counsel for Towers regarding the  
13 fact discovery cutoff.

14 THE COURT: Could I ask a question about the fact  
15 discovery cutoff. In the discovery order, at least the one  
16 that I have, June 30 doesn't appear. So was there a separate  
17 order setting June 30th as the discovery cutoff date?

18 MR. RANAHAN: That is actually in the Northern  
19 District of California local rules, Local Rule 37-3 provides  
20 that discovery motions may be filed after the fact discovery  
21 cutoff.

22 THE COURT: No, but what I mean is --

23 MR. RANAHAN: The fact discovery cutoff --

24 THE COURT: -- what set June 30th as the cutoff?

25 Oh, I see. So you're saying the cutoff date for fact

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1 discovery was June 23rd, and under the local rules, the date  
2 for filing the motion was June 30th. Is that it?

3 MR. RANAHAH: Correct.

4 THE COURT: Go ahead.

5 MR. RANAHAH: So we're not arguing the carve-out in  
6 this stipulation and order applied to this motion. I agree  
7 that that was limited to specific kind of motions.

8 The reason why the motion was filed on July 2nd, we  
9 actually attempted to file it on June 30th, and the sequence of  
10 events is set out at length in our reply brief and supporting  
11 declaration.

12 THE COURT: Yes.

13 MR. RANAHAH: We attempted to file it -- excuse me?

14 THE COURT: I was just saying yes, I understand you  
15 tried to file it, but you weren't successful.

16 MR. RANAHAH: Exactly. The reason given when we  
17 attempted to file it was that it had a printout and a stamped  
18 signature rather than the original ink signature itself. Had  
19 we done our research beforehand, looked at the local rules and  
20 called the Clerk's Office, at no time did we have any  
21 understanding an original ink signature would be required  
22 rather than --

23 THE COURT: I understand it also did not have the  
24 correct number or it didn't have the correct number of civil  
25 cover sheets that were required to be submitted, so I gather

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1 there were two technical problems.

2 MR. RANAHAN: It actually had the correct number of  
3 civil cover sheets. It had three, but there were three  
4 printouts of the scanned signature rather than three original  
5 ink signatures.

6 THE COURT: I see. Okay.

7 MR. RANAHAN: An ink signature was required was the  
8 only thing we didn't meet, and I think we can attest that is  
9 actually a requirement in the first place.

10 THE COURT: It seems to me that with regard to  
11 timeliness, since you did make a good-faith effort to try to  
12 file on the 30th, which was the date by which the motion was  
13 required to be filed, that timeliness is something that can be  
14 excused provided you're really entitled to the discovery.

15 So why don't we turn to whether the information is  
16 relevant and whether it can be had other places or obtained  
17 other places. So let me hear from Mr. Rooney on that.

18 MR. ROONEY: Certainly, your Honor.

19 Let me, first of all, say that of course we are a  
20 non-party and I think what the plaintiff is looking for is to  
21 get correspondence between my client and the defendant in the  
22 case, and obviously the defendant is an obvious source for its  
23 copy of that correspondence. That is one point I would make.

24 Secondly, we have already made a substantial  
25 production of documents to the plaintiff, and let me just lay

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1 out the background there. In essence, Towers Watson has an  
2 official file or files for the work that it did for the  
3 defendant in this case, and that work goes back quite a number  
4 of years, I think 2002 to 2007 or 2008, and per Towers Watson's  
5 official policy which we provided to the court and Mr. Meyer's  
6 supplemental declaration, any substantive correspondence and  
7 other materials, is per policy, to be kept in that physical  
8 file. That was about twelve boxes of documents that was  
9 produced to the plaintiff back in February.

10 THE COURT: Here is the question I have, and that is  
11 that that policy could be interpreted in different ways. There  
12 are varying degrees of significance, and so I guess the real  
13 question is what assurance do we have that anything of any  
14 substantive relevance would be in these paper files?

15 How was the policy interpreted? How strictly was it  
16 enforced? Or was it followed and was there any enforcement of  
17 the policy? All of those are sort of open issues.

18 MR. MEYER: This is Paul Meyer from Towers Watson.  
19 Towers Watson is an actuarial firm. As an actuarial firm, we  
20 have mandatory -- let me --

21 THE REPORTER: I am having a lot of trouble hearing  
22 him.

23 THE COURT: Here is the problem -- wait, wait, please  
24 stop. The problem is we have a court reporter here, and you're  
25 breaking up. So if you could speak loudly and slowly, maybe

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1 the court reporter will be able to understand and hopefully I  
2 will as well.

3 MR. MEYER: As part of our quality control program, we  
4 require strict recordkeeping particularly at Towers parent, so  
5 that everything you saw on the second page of the record  
6 retention schedule is required to be in the files, and as part  
7 of that need to enforce it, quality post-work reviews are done  
8 in every office on a biannual basis and the contents of files  
9 are pulled. Given the requirement that contents of such  
10 deliveries, work favors, client communications, those are not  
11 in the file, the office is penalized. So they have  
12 requirements and they're subject to review for the contents  
13 that are identified on the second page of the Towers record  
14 retention policy.

15 THE COURT: Let me just hear from Mr. Ranahan because  
16 I gather that the issue is really e-mails that may not be in  
17 the paper files and that their adversary in the main suit may  
18 not have retained. Mr. Ranahan, why do you think there are any  
19 such e-mails? Why is it worth it for anyone to go through this  
20 exercise?

21 MR. RANAHAN: Sure. So a few reasons.

22 First, we are going after these e-mails largely  
23 because of the county's e-mail destruction policy which was  
24 submitted with our opening brief. The problem with Towers  
25 Watson's policy is that, one, it leaves it largely up to the



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1 discretion of Towers' employees whether it is significant or  
2 substantive.

3 The e-mails that could be relevant to this case may  
4 not have been considered significant or substantive at the  
5 time. The bulk of one of the major issues in this case is  
6 whether the retiring medical benefits at issue are vested.  
7 This issue was not really in dispute for the bulk of the time  
8 that Towers was working with the county. There could be  
9 e-mails referencing the county's benefit or the county's life  
10 benefits, something that wasn't deemed significant at the time  
11 but now is in retrospect. That is one issue.

12 Two, the policy itself does not actually say anything  
13 about printing out the e-mails. Actually, the policy says that  
14 documents are to be retained in paper and electronic files and  
15 that the preferred storage media is the electronic files.  
16 Really we're going on Mr. Meyer's word. We haven't had a  
17 chance to cross-examine him.

18 There is no evidence that Towers had even looked at a  
19 sample of the electronic documents, to cross-check them with  
20 the hard copy documents to confirm they were, in fact, printed  
21 out. All we have to go on is Towers' word.

22 These e-mails, we proposed a process for production of  
23 these e-mails that protects any confidential information that  
24 may or may not be in there. We think that is sufficient to  
25 meet our obligations under Rule 45.

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1 MR. ROONEY: Your Honor, I didn't get a chance before  
2 to mention there is also something called a file share. This  
3 is laid out in the papers. It was, in effect, the electronic  
4 equivalent of the paper files or counterpart to the paper files  
5 that have already been produced to the plaintiff. That is a  
6 filing system that is particularly to these engagements. I  
7 think the storage of materials electronically that Mr. Ranahan  
8 referenced is that.

9 My client was in the process of readying that for  
10 producing, for production when the plaintiff revoked its  
11 agreement to pay for the vendor expense, simply to produce that  
12 which was I think a thousand dollars or less, and so that  
13 wasn't produced because they changed their mind about  
14 reimbursing our expense for that.

15 The real issue we are talking about is putting aside  
16 the file shares that was particular to the projects are the  
17 general e-mail files that are kept essentially in a vault of  
18 the individuals who worked on the projects, and that included  
19 the e-mails on any matter whatsoever that those individuals  
20 might have happened to have preserved that were not filed or  
21 particular to the engagement.

22 THE COURT: Let me ask this.

23 How does all this fit in with what is happening in the  
24 underlying case? If discovery is over, I don't want something  
25 that I do to interfere with progress or schedule of the case,

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1 so tell me what is happening.

2 MR. RANAHAN: We filed our summary judgment brief in  
3 late May. The Sonoma County filed its cross-motion in late  
4 July or mid-July. Our reply and opposition to the county's  
5 cross-motion is due in early September, and their final reply  
6 brief is due in either late September or early October, with a  
7 hearing in late October, I believe October 29th.

8 Those dates are not going to change based on this.  
9 Ideally, we would like to get this information in time to  
10 submit with our reply brief and opposition to the county's  
11 cross-motion. If that doesn't happen, we are not going to let  
12 this slow down the dispositive motion brief.

13 MR. PECK: Your Honor, this is Steve Peck representing  
14 the defendant in the underlying action.

15 One, this action was filed in 2009. It has been  
16 pending for a long time. I understood what you said about the  
17 late filing, but there was really no reason why, with  
18 reasonable diligence, all of these issues shouldn't have been  
19 resolved long before the filing was made on the very last day  
20 of discovery.

21 Our efforts at this point are to ensure that there are  
22 no disruptions in the current schedule which is agreed to and  
23 has been stipulated. There is a stipulated discovery cutoff.  
24 I think Mr. Ranahan's recitation of the timeline for  
25 dispositive motions, both of which have been filed, theirs and

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1       ours, is correct. As I said, part of that same stipulation was  
2       the fact discovery cutoff.

3               Mr. Ranahan just mentioned he didn't get a chance to  
4       take depositions of any Towers Watson people. We're just  
5       taking their word for it. Well, they have had six years to  
6       pursue both their subpoena and depositions. We're going to  
7       oppose any of them to conduct any discovery beyond what has  
8       been pleaded before the discovery cutoff other than what was  
9       accepted in the stipulated order.

10              THE COURT: Well, I understand your comment. I am not  
11       sure that you have standing to make the objection here, but I  
12       hear what you're saying and it is certainly helpful to have  
13       context.

14              Let me ask this question of Mr. Rooney. If I were to  
15       order the discovery, I have seen your arguments about  
16       confidentiality issues which seem legitimate and serious to me  
17       and the need to review documents, but if you were to undertake  
18       that, how long would it take?

19              MR. ROONEY: We secured an estimate from a third-party  
20       vendor to actually do that, and it is not simply a  
21       confidentiality review. It is also to find out whether the  
22       documents are even responsive. Here we are talking about the  
23       generalized non-filed e-mails of certain Towers Watson  
24       personnel.

25              I don't recall off the top of my head what the

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1 time-frame would be for that third-party vendor to do the  
2 review, and since I have Mr. Meyer on the phone, perhaps they  
3 can simple if they know that.

4 MR. MEYER: This is Paul Meyer.

5 In our experience, it takes typically about two weeks  
6 to conduct this kind of review, and the reason we have to  
7 conduct it in part is, as Mr. Rooney said, we have not only  
8 responses, but we have confidentiality obligations we have to  
9 enforce which are particularly (Inaudible).

10 For example, we didn't review for responsiveness.  
11 Accidentally produced nonresponsive employee sensitive files of  
12 another client with more than 500 employees, that would  
13 constitute a data breach under California law for which we  
14 would have to notify the Attorney General. We have to take  
15 those review obligations very seriously.

16 THE COURT: Let me not prolong this. My order is that  
17 I will require Towers Watson to comply with the subpoena.  
18 However, Towers Watson is a third party here and it seems to me  
19 that there is at least some question about how much in the way  
20 of relevant information there may be in these documents.

21 So I will require the Sonoma County Association to  
22 bear all of the costs of reviewing and producing the documents,  
23 and by that I mean the vendor costs and also the attorney  
24 costs. I expect the parties to talk to each other, however, to  
25 agree on what will be done so that you don't end up handing a

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1 bill to Mr. Ranahan for a hundred thousand dollars, I am just  
2 saying that hypothetically, at the end of the process.

3 I expect that the parties will work together closely  
4 so that, for example, Mr. Ranahan's client can say gee, maybe  
5 we don't really need to search as many of these or perhaps only  
6 of these custodians or do whatever it thinks is necessary since  
7 the work is being done on its dime. I completely credit the  
8 need for not only a relevance review, but also the  
9 confidentiality review.

10 Are there any questions about my ruling?

11 Okay. So I will leave it at that. I will enter a  
12 short written order today to reflect my ruling, and I assume  
13 you will proceed from there.

14 Thank you very much, counsel.

15 (Court adjourned)  
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